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February 18, 2005

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: July 26, 2004

Case Number: TSO-0133

This Decision concerns the eligibility of XXXXX XXX XXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's request for a security clearance should not be restored at this time.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In this instance, the individual was granted a security clearance from DOE after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his eligibility. This derogatory information is described in a Notification Letter issued to the individual on April 12, 2004, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections h, j and l. More specifically, the Notification Letter alleges that the individual: 1) "has an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in judgment and reliability of [the individual]; 2) "is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse,"and 3) "has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security." 10 C.F.R. §§ 710.8(h), (j) and (l) (Criterion H, Criterion J and Criterion L, respectively). The bases for these findings are summarized below.

With regard to Criteria H and J, the Notification Letter states that on July 24, 2004, the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who diagnosed the individual with Alcohol Dependence With Physiologic Dependence, in Active Use. According to the DOE Psychiatrist's report, this is a mental condition that causes or may cause a significant defect in the individual's judgment or reliability. Under Criterion L, the Notification Letter states that the individual has had six alcohol-related arrests since 1978.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on July 26, 2004, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On July 27, 2004, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called the DOE Psychiatrist as its sole witness. Apart from testifying on his own behalf, the individual called as witnesses his wife, his supervisor and a co-worker who is also a close friend. The transcript taken at the hearing will be hereinafter cited as "Tr.". Various documents that were submitted by the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited as "Exh.".

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual accepted a position with a DOE contractor in 1979, and was granted a security clearance in 1980. The individual was granted a security clearance despite information received by DOE Security that the individual had two prior alcohol-related arrests, first on April 2, 1978, on a charge of Driving While Intoxicated (DWI) and second on December 22, 1979, on charges of Reckless Driving and Public Intoxication. After receiving his security clearance, the individual had a third alcohol-related arrest on March 8, 1982, again on a charge of DWI. Following this incident, the individual assured DOE Security that he had learned his lesson and would never again drive after drinking. Three years later, on November 30, 1985, the individual was arrested on a charge of Public Intoxication. In this incident, the individual was arrested while staggering down the road following a car accident in which he was a passenger. Pursuant to this incident, DOE Security conducted a Personnel Security Interview (PSI) with the individual on August 8, 1987. During the PSI, the individual stated that he did not have a drinking problem but was instead the victim of bad luck. The individual was referred to a DOE psychiatrist for evaluation and ultimately was again allowed to retain his security clearance. On July 18, 1992, the individual was again arrested, in this instance on a charge of Public Intoxication. Similarly, the associated security concerns were eventually resolved in favor of the individual.

On the night of November 28, 2002, the individual had a sixth arrest stemming from his use of alcohol. On this occasion, the individual and his nephew went out to a bar after having Thanksgiving dinner with their family. At the bar, the individual reportedly consumed four 18 - 20 ounce beers and a shot of whiskey over a six-hour period before attempting to drive home. According to the individual, he mistakenly thought he was in a 70 mph zone and he increased his speed because his nephew needed to use the restroom. The individual was pulled over at 2:30 a.m. for speeding, traveling 82 mph in a 45 mph zone. The police officer noticed the smell of alcohol on the individual's breath and conducted a field sobriety test which the individual failed. The individual was then arrested on a charge of DWI. The individual refused to take a blood alcohol test.

On May 13, 2003, a PSI was conducted with the individual to receive information regarding the circumstances of his November 2002 DWI arrest. The individual was then referred to the DOE Psychiatrist who examined relevant portions of the individual's personnel security file and conducted a psychiatric interview of the individual. In his report dated July 24, 2003, the DOE Psychiatrist diagnosed the individual with Alcohol Dependence with Physiologic Dependence, in Active Use, based

upon diagnostic criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, I V Edition Text Revision (DSM-IV TR)*. According to the DOE Psychiatrist, the individual's alcohol dependence is a mental condition which causes or may cause a significant defect in his judgment or reliability, and the individual has failed to show adequate evidence of rehabilitation or reformation.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored since I am unable to conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criteria H & J; Mental Condition, Use of Alcohol

Based upon the report and diagnosis of the DOE Psychiatrist,^{2/} I find that DOE Security properly invoked Criteria H and J in suspending the individual's security clearance. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). As observed in these cases, an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the security concerns of DOE.

At the time the individual saw the DOE Psychiatrist in July 2003, he was continuing to drink. Despite his six alcohol-related arrests, the individual still did not see himself as having an alcohol problem but as a victim of bad luck. DOE Exh. 2-1 at 7. Thus, the DOE Psychiatrist viewed the individual as "minimally prepared for or experienced with substance recovery" stating further that "[the individual] clearly has distorted thinking regarding his ability to drink moderately despite his extensive legal history and other danger signs for alcoholism." *Id.* at 8. Regarding reformation and rehabilitation, the DOE Psychiatrist states in his report: "The rehabilitation process begins with the subject accepting his alcohol problems and access in this regard. Of concern is his reluctance regarding [Alcoholics Anonymous (AA)] and other standard programming; however, I have instructed [the individual] to contact [his employer's psychologist], as one option to initiate his substance-based treatment. I have discussed with him the potential of participating with [a specified treatment program] or some other alcohol-based treatment modality. I recommended that he begin being completely abstinent from alcohol. . . . *DSM-IV* diagnostic criteria specify 'early remission' if abstinence has been less than 1 year and that more realistically 3 to 5 years may be required for the various elements of substance recovery to be firmly in place." *Id.* at 8-9. According to the DOE Psychiatrist's report, the individual indicated during his psychiatric interview that he was ready to participate in a treatment program. *Id.* at 8.

^{2/} The DOE Psychiatrist determined that the individual fulfilled three of the criteria required to support a diagnosis of Alcohol Dependence under the *DSM-IV TR*, including: (1) increased tolerance, (2) binges and (3) inability to cut down or control his drinking. *See* DOE Exh. 2-1 at 7.

Following his psychiatric interview in July 2003, the individual continued to drink and did not contact his employer's psychologist or other treatment program as recommended by the DOE Psychiatrist. The individual testified that "[the DOE Psychiatrist] had mentioned treatment, which I basically kind of like took into consideration, but at that time, I didn't think I had a drinking problem." Tr. at 53.^{3/} However, upon receiving the Notification Letter in April 2004, the individual immediately began abstinence from all alcohol^{4/} and further committed in his letter requesting a hearing, dated April 19, 2004, to seek professional counseling with his employer's alcohol treatment program. Tr. at 52, 57-58; Ind. Exh. 1. The individual testified that he had "one brief talk" with a social worker at his employer's treatment program, although at the time of the hearing the individual could not remember the name of the social worker or the date of his appointment. Tr. at 57-58. The individual maintained, however, that the social worker told him at the end of their session that he did not have a drinking problem, only legal problems. Tr. at 58. The individual had no documentation to support this testimony. Tr. at 59-60.

In September 2004, the individual met with a psychologist in a one-hour interview to discuss his use of alcohol. Tr. at 61-62. The psychologist recommended that the individual participate in eight sessions in her treatment program or, in the alternative, that he begin attending AA. *Id.* The individual opted for AA and began attending AA meetings two to three times a week starting in late September 2004. Tr. at 65-67. The individual submitted documentation indicating that he had attended 14 AA meetings by the time of the hearing. Ind. Exh. 2. The individual has an AA sponsor but conceded that he has not yet developed a close relationship with his sponsor and that AA is still "a learning process" at this time. Tr. at 68. Based upon his AA experience thus far, however, the individual now can openly admit that he is an alcoholic, Tr. at 72-73, and that his alcohol-related arrests were not just a matter of bad luck. Tr. at 78-79. The individual testified that he is committed to maintaining his sobriety and remaining in AA. Tr. at 73-75. The individual's close friend and co-worker testified

^{3/} The individual later testified that the DOE Psychiatrist did not say specifically that he should seek counseling. According to the individual: "[The DOE Psychiatrist] didn't just say, yeah, you need to go see this. It was hinted. I don't think he really straight out said, yeah, you need to go." Tr. at 55. However, the DOE Psychiatrist was adamant at the hearing that he did in fact directly discuss treatment options with the individual, as stated in his report. *See* Tr. at 82.

^{4/} The individual's wife corroborated during her testimony that the individual stopped drinking in April 2004 out of concern for possibly losing his security clearance. Tr. at 21-22.

that the individual has displayed a positive attitude about remaining abstinent and attending AA. Tr. at 28-29.^{5/}

However, I find that the individual is still in an early stage of reformation and rehabilitation, with only eight months of sustained abstinence and 14 AA meetings at the time of the hearing. After considering the evidence and testimony presented by the individual, the DOE Psychiatrist stated his opinion that the individual has not yet achieved adequate reformation or rehabilitation, and would require at least 12 months of abstinence before his alcohol dependency could be considered to be in full remission. Tr. at 89-90. Consequently, I find that the individual has not overcome the security concerns associated with his alcohol dependence, and I cannot recommend restoring the individual's security clearance at this time. *See Personnel Security Hearing*, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

B. Criterion L, Unusual Conduct

The record of this proceeding establishes that the individual has been arrested six times since 1978, including most recently on a charge of DWI in 2002. The individual had previously assured DOE Security that he would not drink and drive after his DWI arrest in 1982. Under these circumstances, I find that DOE Security properly invoked Criterion L on the basis that the individual has engaged in conduct casting doubt upon his reliability and trustworthiness. All of the individual's arrests stem from his use of alcohol and, as determined above, the individual has not yet achieved adequate reformation or rehabilitation from his alcohol dependency. I therefore find, correspondingly, that the individual has failed to adequately mitigate the concerns of DOE Security under Criterion L at this time.

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h), (j) and (l) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has failed to mitigate the associated security concerns. I am therefore unable to find that restoring the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's request for an access authorization should not be restored at this time.

^{5/} The individual also presented testimony and documentary evidence indicating that he is a reliable worker and has not let his alcohol use adversely affect his job performance. *See* Tr. at 40, 49; Ind. Exh.'s 3, 4, 5.

The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: February 18, 2005